95-1086

Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1995

EMILY DISTAJO, et al.,

Petitioners,

v.

DOCTOR'S ASSOCIATES, INC.,

Respondent.

Petition for a Writ of Certiorari
to the United States Court of
Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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January 2, 1996

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QUESTIONS PRESENTED FOR REVIEW

(1) Whether 9 U.S.C. § 4 confers subject matter jurisdiction of petitions to compel arbitration upon United States District Courts which do not, and could not, have subject matter jurisdiction of the underlying state court lawsuits raising the issues to be arbitrated.

(2) Whether Illinois law permits relitigation of the enforceability and validity of the arbitration clauses while post-trial motions and/or appeals are pending from the prior nine Illinois trial court final judgments holding the arbitration clauses void and unenforceable.

(3) Whether North Carolina law permits relitigation of the enforceability and validity of the arbitration clause while DAI appeals the prior North Carolina state trial court orders denying DAI's motion to stay

under 9 U.S.C. § 3 and denying DAI's motion to dismiss based upon the contention that the arbitration clause required arbitration as a condition precedent to litigation.

(4) Whether the rule of *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1 (1983) required the Federal Courts to abstain from exercising subject matter jurisdiction of the petitions to compel arbitration, in view of the prior nine Illinois, one Alabama, and one North Carolina state trial court judgments holding the arbitration clauses void and unenforceable.

PARTIES TO PROCEEDINGS

The parties to Case Numbers 94-9207, 94-9293 and 94-9209 in the United States Court of Appeals for the Second Circuit were Emily Distajo, Renato, Distajo, Constantino Lamando, Milo Lamando, Jose Alberto Brenes, Alvaro Guerrero, Maria T. Guerrero, Wesam S. Youmaran, Linda Youmaran, Julie Shino, Johnson Shino, Albert Yonan, Leylah Yonan, Louise Loenneke, Mary Ann Bookout, Michael Johnson, Deborah A. Kane, Gregory F. Kane, Bruno Gianinni, Ronald Rothmund, Patricia Rothmund, John S. Papaleo, J.S.P., Inc., John A. McCrary, John Gillon, Sonya Smith, Paul Riise, Melissa Riise, and Rhonda Benton as Defendants-Appellants and Doctor's Associates, Inc. as Plaintiff-Appellee. The parties to Case Number 95-7183 in the United States Court of Appeals for the Second Circuit were Sandra Bickel

and Raymond Bickel, Defendants-Appellants and Doctor's Associates, Inc., Plaintiff-Appellee.

One opinion was issued by the Second Circuit Court of Appeals for all four appeals.

J.S.P., Inc. is a closely held corporation which is not publicly traded and has no subsidiaries, parent corporations or affiliates and is owned by John S. Papaleo, one of the petitioners.

Doctor's Associates, Inc. is not publicly traded and is owned by Frederick DeLuca and Peter S. Buck who are each 50 percent shareholders. Doctor's Associates, Inc. is a Subchapter S corporation. Petitioners are not aware of any subsidiaries of Doctor's Associates, Inc. Affiliated corporations also owned by Frederick DeLuca and Peter Buck include Subway

Sandwich Shops, Inc., Subway Restaurants, Inc., Subway Real Estate Corp., Franchise Real Estate Leasing Corporation, Franchise World Headquarters, Inc., National Company Stores, Inc., Subway Central, Inc., Subway West, Inc., Subway South, Inc., Subway East, Inc., Subway Management, Inc., Subway Development of America, Inc., Subway Leasing Corp., Inc., Subway Real Estate Development, Inc., National Franchise Realty, Inc., Subway Restaurants of California, Inc., Subway Sandwiches, Inc., Subway Sandwiches & Salads, Inc., and Subway Equipment Leasing Company, Inc. To the understanding of Petitioners, all of these companies are owned by Frederick DeLuca and Peter Buck.

Petitioners are not aware of any other subsidiaries, parent companies, affiliates or shareholders which are

required to be listed pursuant to Rule 29.01.

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Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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PETITION FOR A WRIT OF CERTIORARI

Emily Distajo, et al., respectfully petition for a writ of certiorari to review the judgment and order of the Second Circuit entered on September 12, 1995, as amended on September 28, 1995, and the orders of November 1, 1995 and November 14, 1995 denying the petitions for rehearing

OPINIONS BELOW

The September 12, 1995 judgment of the Second Circuit is reported at *Doctor's Associates, Inc. v. Distajo*, 66 F.3d 438 (2nd Cir. 1995) and is reprinted in the appendix.

JURISDICTION

This Court has jurisdiction to review the judgment of the Second Circuit under 28 U.S.C. § 1254(1).

Petitioners submit that the District Court did not have subject matter jurisdiction under 9 U.S.C. § 4.

The Second Circuit had jurisdiction to review the judgments of the District Court under 28 U.S.C. § 1291, 28 U.S.C. § 16(a)(3) and 28 U.S.C. § 1292(a)(1).

STATUTORY PROVISIONS INVOLVED

9 U.S.C. §§ 3 and 4, 28 U.S.C. § 1738, 735 ILCS § 5/2-619(a)(3), Illinois Supreme Court Rules 20(a) and (b), 304(a) and 272, all of which are set

forth in the appendix.

STATEMENT OF THE CASE

Doctor's Associates, Inc. (hereinafter "DAI") is the national franchisor for Subway Sandwich Shops. Its standard franchise agreements provide that both it and the franchisee will arbitrate all disputes in Connecticut and that arbitration is a condition precedent to litigation. DAI also requires each franchisee to sign a sublease with a leasing company. Each leasing company enters into a master lease with the landlord for each location. The rent due under the sublease is the same as the rent due under the master lease and the franchisees pay rent directly to the landlord.

Each sublease contains a "cross-default" clause which provides that a default in the terms of the franchise

agreement by the franchisee, sub-tenant is a breach of the sublease.

The leasing companies have no employees, no income, no assets, file no income tax returns and have been held to be the alter-egos of DAI in several cases.

DAI uses its alter-ego leasing companies to resolve its claims against the franchisees by filing eviction lawsuits, in the names of the leasing companies, under the terms of the "cross-default" provision in the subleases. At the same time DAI requires the franchisees to resolve their related claims against DAI by arbitration in Connecticut. The subleases do not have arbitration clauses.

The 17 groups of franchisees-defendants filed, respectively, 17 state court lawsuits against DAI, its leasing

companies, development agents and owners. Nine such state court lawsuits were filed in Illinois, 5 in Alabama, 1 in North Carolina, 1 in Massachusetts and one in Pennsylvania. The franchisees claimed, in their state court lawsuits, that the arbitration clauses were void and unenforceable because the agreements lacked mutuality, because DAI waived its right to arbitrate by proceeding through its alter-ego leasing companies, because DAI fraudulently induced the franchisees into the arbitration agreement by representing that arbitration was a condition precedent to litigation by both parties and because the arbitration agreements were unconscionable and did not meet the reasonable expectations of the parties.

Eleven of the state courts (all of the state courts that considered the

issue) entered judgments in favor of the franchisees holding the arbitration clauses void and unenforceable for one or more of these reasons.

The state court lawsuits claimed damages for breach of contract, fraud, violation of the state consumer protection statutes and violation of the state Franchise Disclosure Acts.

After the franchisees filed their state court lawsuits, DAI filed 17 petitions to compel arbitration in the Federal Court for Connecticut and sought preliminary injunctions to enjoin the franchisees from prosecuting their state court lawsuits.

The franchisees joined the development agents as defendants in each of the 17 state court lawsuits. The development agents, in each case, were citizens of the same states as the franchisee plaintiffs. The state court

lawsuits did not assert claims under any Federal statutes. There was neither Federal question nor Federal diversity jurisdiction of the state court lawsuits.

In the Connecticut District Court the franchisees each contended that the District Court lacked subject matter jurisdiction under 9 U.S.C. § 4, that the prior 11 state court judgments holding the arbitration clauses void and unenforceable were binding on the Federal Court under the Full Faith and Credit Statute, 28 U.S.C. § 1738, and that the Federal Court should abstain from exercising jurisdiction.

On November 10, 1994, the District Court entered orders compelling all 17 groups of franchisees to arbitrate their claims against DAI in Connecticut. The District Court then entered temporary restraining orders and preliminary

injunctions against the franchisees barring them from prosecuting their 17 state court lawsuits.

The 17 groups of franchisees appealed.

On September 12, 1995, the Second Circuit issued its opinion reversing the District Court on all 17 orders compelling arbitration and all 17 preliminary injunctions and remanded the cases to the District Court to consider the franchisees' fraud, waiver and alter-ego defenses to arbitration. The Petitioners' petitions for rehearing were denied on November 1 and November 14, 1995.

REASONS FOR GRANTING THE WRIT

(1) The Court should grant the Petition to clarify that 9 U.S.C. § 4 does not grant subject matter jurisdiction to the United States District Courts to compel arbitration of

issues raised in underlying state court lawsuits of which the Federal District Courts could not, and do not, have subject matter jurisdiction.

The District Court ordered the 17 groups of franchisees to arbitrate their damage claims against DAI. These damage claims are set forth in the underlying state court lawsuits. It is undisputed that the Federal Courts do not, and could not, have subject matter jurisdiction of those underlying claims.

The Federal Arbitration Act, 9 U.S.C. § 1 *et seq*. does not create any independent Federal question jurisdiction under 28 U.S.C. § 1331. 9 U.S.C. § 4 provides for an order compelling arbitration only when the Federal District Court would have jurisdiction over a suit on the underlying dispute. *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*,

460 U.S. 1, 25n. 32, 103 S.Ct. 927, 941n. 32, 74 L.Ed. 2d 765 (1983).

9 U.S.C. § 3 provides that a motion to stay litigation pending arbitration may be filed only in the lawsuit sought to be stayed. In the cases at bar, such motions could have been filed only in the underlying 17 state court lawsuits. On the other hand, petitions to compel arbitration under 9 U.S.C. § 4 may be filed wherever jurisdiction and venue are proper. The net result of successful actions under 9 U.S.C. §§ 3 and 4 are the same. The existing lawsuit (if one has been filed) is stayed pending arbitration.

In *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 26 n.35, 103 S.Ct. 927, 74 L.Ed.2d 765 (1983), this Court noted that at least one court has held that state courts may grant orders compelling arbitration

under 9 U.S.C. § 4, citing *Maine v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 67 Cal.App.3d 19, 24-25, 136 Cal. Rptr. 378, 380-381 (Cal. App. 1977).

DAI filed petitions to stay 5 of the first 6 Illinois state court lawsuits under 9 U.S.C. § 3, then withdrew those motions before the state court could rule.

DAI thus abandoned all efforts to litigate the enforceability and validity of the arbitration clauses in the state court actions under 9 U.S.C. § 3 in favor of litigating those issues in the Federal Court in Connecticut under 9 U.S.C. § 4.

Enforcement of the Federal Arbitration Act is left to the state courts in most cases. *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25 n.32, 103 S.Ct. 927, 941 n.32, 74 L.Ed. 2d 765 (1983).

9 U.S.C. § 4 provides:

> "A party aggrieved by the failure *** of another to arbitrate under a written agreement for arbitration may petition any United States District Court which, save for such agreement, would have jurisdiction under Title 28, in a civil action *** of the subject matter of a suit arising out of the controversy between the parties ***" (*Emphasis added*).

Petitioners submit that 9 U.S.C. §§ 3 and 4 must be read together and further submit that Congress did not intend to confer subject matter jurisdiction of petitions to compel arbitration upon Federal District Courts which could not have jurisdiction of the underlying lawsuits raising the issues to be arbitrated. Petitioners submit that 9 U.S.C. § 1, *et seq.*, was not intended to change the rules governing jurisdiction. Instead, the intent of the Federal Arbitration Act was to enforce arbitration agreements according

to their terms by either the state or Federal Courts which otherwise have jurisdiction of the underlying claims.

In *Prudential-Bache Securities, Inc. v. Fitch*, 966 F.2d 981, 988 (5th Cir. 1992), the Court recognized that 9 U.S.C. § 4 appears to condition Federal court jurisdiction of petitions to compel arbitration upon Federal Court jurisdiction of the underlying dispute. The Court, however, avoided the issue presented here by holding that the claimed Federal question jurisdiction raised in the related state court lawsuit was not before the Court which based its decision strictly upon the allegations of the complaint to compel arbitration.

Petitioners' position is based upon the text of 9 U.S.C. § 4 upon which DAI relies for subject matter jurisdiction. Petitioners' position is not based upon

the joinder or non-joinder of the non-diverse state court parties to the Federal court petitions to compel arbitration.

The Second Circuit analyzed the subject matter jurisdiction issue primarily on the grounds that the non-diverse development agents were not indispensable parties to the petitions to compel arbitration under F.R.C.P. 19(a) and (b). See the Appendix at pages 15a and 16a.

Petitioners respectfully submit that Congress did not intend for the Federal Arbitration Act to extend the scope of Federal Court jurisdiction but, instead, intended for the Federal Arbitration Act to be enforced by the state and Federal Courts in accordance with existing jurisdictional rules.

(2) The Court should grant the Petition to resolve the conflict between

the Second Circuit and the Illinois Supreme Court on the issue of whether the prior nine Illinois state court judgments, holding the arbitration clauses void and unenforceable, would be given preclusive effect by the Illinois State Courts, thereby entitling those prior judgments to full faith and credit in the Federal Courts.

The Second Circuit misapprehended or overlooked the Petitioners' arguments that *Harding Company v. Harding*, 352 Ill. 417, 426 [4], 186 N.E. 152 (Ill. 1933) established that the doctrine of *res judicata* prohibits the parties to a final trial court judgment from relitigating that issue, except by appeal, and that this rule of law was not overruled or reversed by the Illinois Supreme Court opinions in *Relph v. Board of Education*, 84 Ill.2d 436, 420 N.E.2d 1947 (Ill. 1981) and *Ballweg*

v. City of Springfield, 114 Ill.2d 107, 499 N.E.2d 1373 (Ill. 1986) which are factually distinguishable.

Harding Company v. Harding was just cited with approval by the Illinois Supreme Court on a collateral estoppel issue in *Herzog v. Lexington Township*, Ill. S.Ct. No. 77037, slip opinion issued on October 19, 1995, at page 4.

The Second Circuit also overlooked Petitioners contention that an Illinois statute, which requires dismissal of a second lawsuit raising the same claims between the same parties, gave preclusive effect to the 9 prior Illinois trial court judgments. *See* 735 ILCS § 5/2-619(a)(3). The Second Circuit did not address that argument. The Second Circuit also did not refer to *Harding Company v. Harding* in its opinion. *See* the Appendix at 26a.

The Illinois trial court judgments

were entered under Illinois Supreme Court Rules 272 and 304(a) which specifically provide that the trial court judgments are final, appealable judgments. Those two rules and the holding in *Relph v. Board of Education*, 84 Ill.2d 436, 420 N.E.2d 1947 (Ill. 1981) establish that an Illinois trial court's judgment becomes final for purposes of *res judicata* and appeal at the same time.

This principle was reaffirmed by the Illinois Supreme Court in *In re Marriage of Verdung*, 126 Ill.2d 542, 535 N.E.2d 818, 823 [7] (Ill. 1989), three years after the opinion in *Ballweg v. City of Springfield*.

The Second Circuit also overlooked Illinois appellate court opinions which provide that lawsuits raising issues previously decided in prior litigation between the same or related parties

should be stayed when the prior decisions are the subject of appeal, until the issue is decided in the first appeal. *Wiseman v. Law Research, Inc.*, 270 N.E.2d 77, 80 (Ill. App. 1981) and *Illinois Founders Ins. Co. v. Guidish*, 248 Ill.App.3d 116, 120, 618 N.E.2d 436 (Ill. App. 1993). Those opinions are consistent with and not in conflict with the Illinois Supreme Court decisions in *Relph v. Board of Education* and *Ballweg v. City of Springfield*.

The Second Circuit acknowledged the conflict in the Illinois decisions. The Second Circuit, however, could not certify the questions of Illinois state law to the Illinois Supreme Court. The Illinois Supreme Court will accept certification of questions of state law only from the Seventh Circuit or the United States Supreme Court. Illinois Supreme Court Rule 20(a).

In addition to the 11 state trial court judgments at issue here, the Illinois courts have previously held that DAI waives its right to arbitrate by filing eviction lawsuits in the name of its alter-ego and/or agent leasing companies. *Yates v. Doctor's Associates, Inc.*, 193 Ill.App.3d 431, 549 N.E.2d 1010 (Ill. App. 1990). Illinois courts have also previously approved the award of punitive damages against DAI, in favor of a franchisee, on the grounds, among others, that this method of resolving disputes constitutes a fraud on the franchisee. *Cox v. Doctor's Associates, Inc.*, 245 Ill.App.3d 186, 613 N.E.2d 1306 (Ill. App. 1993), petition for leave to appeal denied, 152 Ill.2d 556 (1993), cert. denied 114 S.Ct. 1069 (1994).

In *Allen v. McCurry*, 449 U.S. 90, 95 [6], 101 S.Ct. 411, 66 L.Ed.2d 308

(1980), the United States Supreme Court stated:

> "[6] The federal courts generally have also consistently accorded preclusive effect to issues decided by state courts. *E.g., Montana v. United States, supra; Angel v. Bullington*, 330 U.S. 183, 67 S.Ct. 657, 91 L.Ed. 832. Thus, *res judicata* and collateral estoppel not only reduce unnecessary litigation and foster reliance on adjudication, but also promote the comity between state and federal courts that has been recognized as a bulwark of the federal system. See *Young v. Harris*, 401 U.S. 37, 43-45, 91 S.Ct. 746, 750-751, 27 L.Ed.

669."

At the very least, the Illinois Supreme Court should be given the opportunity to clarify whether the prior Illinois judgments would or would not have preclusive effect under Illinois law, thereby requiring the Federal Courts to give full faith and credit to such prior state court judgments under the Full Faith and Credit Statute, 28 U.S.C. § 1738.

(3) The Court should grant the Petition to resolve the conflict between the Second Circuit and the North Carolina Supreme Court on the issue of whether the prior North Carolina state trial court decision, holding the arbitration clause void and unenforceable, would be given preclusive effect by the North Carolina state courts, thereby entitling that prior judgment to full faith and credit in the

Federal Courts.

Under North Carolina law it is clear that when a fact has been agreed upon or decided in a court of record, neither of the parties shall be allowed to call it into question, and have it tried over again at any time thereafter so long as the judgment or decree stands unreversed. *King v. Grindstaff*, 284 N.C. 348, 200 S.E.2d 799, 804 (N.C. 1973), *Bryant v. Shields*, 220 N.C. 628, 18 S.E.2d 157 (N.C. 1942), *McInnis & Associates, Inc. v. Hall*, 318 N.C. 421, 349 S.E.2d 552, 556, 557 [4-6] (N.C. 1986).

DAI filed a petition to stay the North Carolina state court lawsuit pending arbitration under 9 U.S.C. § 3. This is the only case in which DAI actually litigated a state court claim under 9 U.S.C. § 3. DAI also filed a motion to dismiss the North Carolina

state court lawsuit on the ground that the arbitration clause provides that arbitration is a condition preceded to litigation. The franchisee responded by arguing that he was fraudulently induced into the arbitration agreement and that the arbitration agreement lacked mutuality. Affidavits were filed by both sides and oral argument was held after briefs had been filed.

The record established that the North Carolina trial court necessarily denied the motion to stay under 9 U.S.C. § 3 and the motion to dismiss on one or both of the two defenses to arbitration asserted by Michael Johnson, i.e. (1) fraud with respect to the arbitration agreement and/or (2) lack of mutuality in the arbitration agreement.

DAI appealed those orders to the North Carolina court of appeals and has filed its brief as appellant. The

injunction issued by the Connecticut District Court has precluded Michael Johnson from filing his responsive brief in the North Carolina court of appeals.

The Second Circuit concluded that the North Carolina appealable orders were not entitled to preclusive effect under North Carolina law because they did not state which of the two alternative grounds formed the basis for the North Carolina trial court orders. *See* the Appendix at pages 26a-28a.

Since both of the alternative issues would render the arbitration clause void and unenforceable, according to the North Carolina courts, the North Carolina courts clearly would give preclusive effect to the prior North Carolina trial court appealable orders in this case.

It is not the role of the Federal Courts to determine whether the North

Carolina court was or was not correct in concluding that lack of mutuality would render the arbitration clause void and unenforceable. The only issue before the Federal Courts is whether the North Carolina courts could give preclusive effect to those rulings.

Petitioners submit that it would elevate form over substance to the highest degree to conclude that the North Carolina courts would not give preclusive effect to those prior North Carolina trial court appealable orders on the grounds that the orders do not clearly delineate which of the two reasons, or both, form the basis for those decisions.

The Full Faith and Credit Statute, 28 U.S.C. § 1738 and *Allen v. McCurry*, 449 U.S. 90, 95 [6], 101 S.Ct. 411, 66 L.Ed.2d 308 (1980) require the Federal Courts to give full faith and credit to

the prior North Carolina appealable trial court orders.

(4) The Court should grant the Petition to resolve the conflict between the Second Circuit and this Court's prior opinion in *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1 (1983) on whether the Federal Courts should abstain from exercising subject matter jurisdiction, in view of the eleven prior state court judgments holding the arbitration clauses void and unenforceable.

All of the factors which require the Federal Courts to abstain from exercising jurisdiction, in cases of this type, that were absent in the *Moses Cone* cases, are present here. *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 16, 16, 74 L.Ed.2d 765, 779, 780, 103 S.Ct. 927 (1983). Connecticut is geographically

inconvenient for all of the defendants-franchisees. DAI is a Florida corporation with is principal office and place of business in Florida. The exercise of jurisdiction by the Connecticut Federal Court has resulted in extensive, piecemeal, litigation. The state court cases are far advanced in comparison to the Federal Court cases. Eleven state courts have already ruled that the arbitration clauses are void and unenforceable. Prior state court appellate opinions have held that DAI waives its right to arbitrate when it files eviction lawsuits in the name of its alter-ego leasing companies to resolve disputes under the franchise agreement. *Yates v. Doctor's Associates, Inc.*, 193 Ill.App.3d 431, 549 N.E.2d 1010 (Ill. App. 1990). Illinois appellate courts have previously approved the award of $1

million in punitive damages against DAI, in favor of a franchisee, on the grounds, among others, that this method of resolving disputes constitutes a fraud on the franchisee. *Cox v. Doctor's Associates, Inc.*, 245 Ill.App.3d 186, 613 N.E.2d 1306 (Ill. App. 1993), petition for leave to appeal denied, 152 Ill.2d 556 (1993), cert. denied 114 S.Ct. 1069 (1994). Appeals by DAI in the underlying state court cases are currently pending in the Alabama Supreme Court, the North Carolina Court of Appeals and the Illinois Court of Appeals.

The Second Circuit ordered the District Courts to resolve the arbitration defenses of fraud, alter-ego and waiver.

These issues have previously been tried and decided against DAI in the 11 prior state trial court decisions and in

the prior Illinois appellate court opinions cited above.

Surely the principles of abstention require the Federal Courts to abstain from retrying the same issues that have previously been tried, retried and appealed, unsuccessfully, by DAI on numerous prior occasions.

The purposes the Full Faith and Credit Statute, 28 U.S.C. § 1738, are to reduce unnecessary litigation, foster reliance upon adjudication and promote comity between the state and Federal Courts. *Allen v. McCurry*, 449 U.S. 90, 95 [6], 101 S.Ct. 411, 66 L.Ed.2d 308 (1980).

Under our dual federal/state system of jurisprudence, the lower Federal Courts are not superior to the state courts. *Lion Bonding & Surety Co. v. Caratz*, 262 U.S. 77, 90, 43 S.Ct. 480, 484, 67 L.Ed. 871 (1923), cited with

approval in *Doctor's Associates, Inc. v. Distajo*, 66 F.3d 438, 448 [6] (2nd Cir. 1995). *See* the Appendix at page 22a.

The failure to abstain from exercising subject matter jurisdiction, in the cases at bar, converts the lower Federal Court into a court of appeals for the state courts.

CONCLUSION

For one or more of the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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